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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/684,640	10/14/2003	Heidi A. Skillman	10233-2-1	3731

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EXAMINER

HANEY, RICHALE LEE

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 09/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/684,640

Applicant(s)

SKILLMAN, HEIDI A.

Examiner

Richale L. Haney

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Information Disclosure Statement

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Drawings

2. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the photograph images have poor contrast and it is difficult to determine the features of the instant invention, Figures 5 and 15 are especially poor. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Claim Objections

3. Claim 1 is objected to because of the following informalities: the specific portion "means for gathering a portion of said first panel proximate said top edge to effectively make said dimension A substantially equal to said dimension B" does not meet the criteria necessary to invoke U.S.C 112 6th paragraph. The specification does not identify what the means for gathering are and as to

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whether this is a machine operation or a human operation. Moreover, it is well known in the art that the means for gathering, tucking, or pleating is the stitching, or other securing method, that holds the excess material in place. Moreover, the terms gathering and pleating are not synonymous to one of ordinary skill in the art. Pleating is defined by the Fairchild's Dictionary of Textiles as "doubling a fabric over into folds and fixing them in place by sewing or pressing" and gathering is the method of using loose stitches in the seam allowance portion to evenly pull in excess fabric, without creating noticeable tucks or folds, to create fullness in a specific, desired area. Appropriate correction is required.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1 – 23, 27 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herzberg (US 3,105,970) in view of Helen Joseph-Armstrong's "Patternmaking for Fashion Design" (pgs. 226 –27, 217). The device of Herzberg discloses a scarf comprised of either two or three layers of fabric (Figure 2), either chiffon (silk) or a knitted fabric for warmth (fleece) (Column 1, lines 56- 59 and 64-65), wherein the first panel has a peripheral edge extending from one end of said first panel top edge to the other end of said first panel top edge, and a second panel has a peripheral edge extending from one end of said second

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panel top edge to the other end of said second panel top edge (Figure 1), wherein all panels are generally triangular in shape, having a base and an apex, third and fourth sides extending from either side of the base to the apex and all layers are substantially congruent (Figure 1). The measure of the panel top edge to the lower part of the apex on the first panel and second panels are dimensions A and B, respectively. The first and second panels are attached to form a peripheral seams by stitching (Figure 4, 20 and Column 2, lines 5 - 6) and a gathering means (Figure 3, 26) is used proximate to the top edge to form a plurality of pleats that form at least one air chamber proximate to the top seam (Figure 8). The invention also discloses a means for attaching the scarf around the neck of the wearer by joining a first and second tab portion located opposite one another and proximate said top seam (Figure 1, 24). The device of Herzberg does not disclose that dimensions A and B are different, wherein dimension A is greater than dimension B. Nor does the invention show that the pleats are formed by folding a portion of the front side of the first panel toward the top edge and that the pleats are held in place by stitching the folded portion. Joseph-Armstrong teaches the method of pleating by first extending or lengthening the first panel (Figure 1, pg. 226) portion to create the pleats (Figure 2, pg. 227) and folding the extended portion against itself in order to form the pleated portions (Figure 3, pg. 227) which returns the panel to approximately the original size of the pattern piece. The pleats are formed on the shoulder portion of the garment pattern and would be secured by stitching when the first front panel is joined with the back panel portion of a substantially similar size (Figure 5, pg. 217). It would

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have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Herzberg by utilizing pleating as taught by Joseph-Armstrong, rather than the draping method shown in order to obtain uniform, even folds in a secured fashion.

6. Claims 24 –26 and 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herzberg and Joseph-Armstrong as applied to claims 1 – 23, 27 and 28 above, and further in view of Haliczzer (US 2,752,916). The modified device of Herzberg shows all of the claimed invention except for the tabs being sewn to the left and right backside edges of the pleated panels. The device of Haliczzer shows a left and right tab attached to the pleated face portion. The method of sewing is not specifically disclosed; however, it would have been obvious to someone of ordinary skill in the art to substitute the attachment method discussed with the method of sewing as previously taught. It would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify Herzberg and Joseph-Armstrong by attaching the closure tabs to the panel portions as taught by Haliczzer in order to achieve a more finished appearance for the article of manufacture.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Thomson (US 5,414,689) shows a scarf comprised of two fabric layers forming multiple folds and the method of manufacture to make the scarf reversible.

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Walker (5,720,052) shows a face mask with tabs attached to the right and left sides to secure the device to the user.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richale L. Haney whose telephone number is 571-272-8689. The examiner can normally be reached on M-F 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on 571 -272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Richale L. Haney
Patent Examiner
Art Unit 3765
September 1, 2005

RLH


JOHN J. CALVERT
SUPERVISORY PATENT EXAMINER
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